

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7291 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

FATESINH BALVANTSINH

Versus

UNION OF INDIA

Appearance:

MR PH PATHAK for Petitioners

MR CP JADAV FOR MR JC SHETH for Respondents

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.M.KAPADIA

Date of decision: 13/10/98

ORAL JUDGEMENT (Per C.K. Thakker, J.):

Rule. Mr. C.P. Jadav for Mr. J.C. Sheth appears and waives service of rule. In the facts and circumstances of the case, the matter is taken up for final hearing today.

This petition is filed for an appropriate writ, direction or order quashing and setting aside an order passed by

Central Administrative Tribunal, Ahmedabad in OA No. 419 of 1989 and also in Review Application No.27 of 1998, being illegal, arbitrary and unlawful and by declaring that the petitioners are entitled to travelling allowance and by directing respondent authorities to pay the same with 18% interest.

The case of petitioners was that they were employes of Railway Administration. They were transferred to various places. According to them, said transfer was not at the request of petitioners and hence they were entitled to transfer allowance. For this purpose, reliance was placed on Rule 1642 of the Indian Railway Establishment Code.

The Tribunal, no doubt, considered the provisions of Rule 1642. But the grievance of the petitioners is that only sub-rule (1) of Rule 1642 was considered by the Tribunal which states that travelling allowance shall not be drawn if the transfer is at the request of the employee. It was submitted that the transfer was not made at the request of the petitioners and in none of the orders it was mentioned that transfer was at the request of the employees. Hence, not sub-rule (1) but sub-rule (2) of Rule 1642 would apply. The Tribunal, contended the learned counsel for petitioners, did not consider the provisions of sub-rule (2) and decided the matter considering sub-rule (1) only. Hence, a Review Application was filed but it also met with the same fate. The Tribunal rejected the same observing that no error of law apparent on the face of record can be said to have been committed.

In the facts and circumstances of the case, in our opinion, the point requires consideration. The petition is, therefore, allowed by quashing and setting aside the orders passed by the Tribunal in OA No.419 of 1989 and Review Application No.27 of 1998 and remanding the matter to the Tribunal to decide the same after considering the provisions of Rule 1642 as a whole. The petition is accordingly allowed to the above extent. In the facts and circumstances, no order as to costs.

Since the question pertains to travelling allowance only, the Tribunal is directed to decide the same as expeditiously as possible, preferably within three months from the date of receipt of the writ.

(karan)